Introduction.

- “Voter turnout in the United States is much lower than in other democracies” (591). It was “about 60%” in 2004.
- “The decision not to vote can be a rational one” (591)—in the narrow economic sense. Free-rider problem. “[T]he likelihood of any single vote influencing the outcome of an election is negligible” (591). Paradox of voting: why does anyone vote (for it seems irrational to do so)?
- Twenty-four nations have compulsory voting (17% of the world’s democratic nations). Why not us?
- “The introduction of compulsory laws raises several interesting legal, philosophical, political, and practical questions” (592). Read the marked paragraph on page 592.
- The author argues “in favor of adopting compulsory voting laws in the United States” (592).

I. The Problem of Low Voter Turnout in America.

- “Given how limited the franchise was until the twentieth century, and the low rates of voter turnout in recent decades, it is likely that no U.S. President has ever received a majority of the votes of the American adult population” (594). Reagan in 1984 received 32.9% of the potential electorate, and that was considered a landslide.
- How legitimate is a government when “the vast majority of citizens have not elected it” (594)?
- Certain groups are underrepresented; “the center of political gravity has shifted toward the wealthiest white Americans” (595). “The U.S. Census Bureau consistently reports that voters are more likely than nonvoters to be white, old, well-educated, and wealthy” (595 n. 29).

II. Some of the Benefits of Compulsory Voting.
• Direct. “[I]t would lead to higher voter turnout” (596). This is a benefit in its own right (self-governance) and it “would actually change electoral and policy outcomes in ways that better reflect aggregate preferences” (596).

• Indirect. “[C]ompulsory voting would reduce the role of money in politics” (596). Much money is spent (now) on getting out the vote. Query: What’s wrong with money in politics?

• Indirect. “[I]t might lead to the kinds of changes in American political culture that could increase political awareness and engagement” (597). Fewer negative campaigns featuring attack ads, which are designed to reduce turnout. If turnout is guaranteed, there is no point in this. “Compulsory voting would bring a new population into play, and would force political actors to make changes in their campaign methods in order to take these new voters into account” (597). “[C]ompulsory voting can make politics less partisan and divisive, since currently the voting population is much more partisan than the electorate at large” (597). It will “force politicians to shift their focus to different sets of issues” (597).

III. Philosophical and Legal Objections to Compulsory Voting.
“This Part will address the four most important legal issues pertaining to compulsory voting in America” (598). Note the argumentative posture. The author is arguing for proposition p (that there should be compulsory voting in the United States). A critic can either (i) find fault with the author’s arguments for p or (ii) argue against p. The former strategy attempts to show that p lacks support (i.e., hasn’t been shown to be true); the latter attempts to show that p is false.

A. Is There a Right Not to Vote? Many rights imply a choice: speaking or not speaking; worshipping or not worshipping. Is the right to vote like this? Can’t a right be waived? The author says no; “Numerous rights cannot be waived” (599). The right to a jury trial does not imply a right not to have a jury trial (government consent must exist). Other Sixth Amendment rights as well. “The reason a right does not imply its inverse is that there are competing interests at stake. An individual right may serve both a public and a private interest, and creating an absolute individual right of waiver would leave unprotected the public interest that the right serves” (599). The author is rejecting the following claim: If S has a right to do (or have) x, then S has a right
not to do (or have) x. All it takes is one counterexample. Read the marked paragraph on page 600.

B. Compulsion and Individual Liberty. “A powerful objection to compulsory voting, more philosophical than doctrinal, is that it is an interference with individual liberty” (600). Reply: Government can legitimately compel people to do things, such as serve on juries, pay income tax, and serve in the military. “In all of these examples, it is obvious that compulsion is necessary to avoid some kind of market failure” (601). Read the marked passage on page 601. Discuss the individual mandate of ObamaCare, which was upheld as a tax (rather than as an exercise of Congress’s power under the Commerce Clause).

C. Compulsory Voting and the First Amendment Prohibition on Compelled Speech. “Unlike some rights, the First Amendment right to free speech does imply an inverse right not to be compelled to speak” (601). But voting isn’t speech; “The expressive function of elections is secondary to their function in selecting government leaders” (601). A state can prohibit write-in candidates, for example. “A person is not being forced to express any particular viewpoint when a law requires him to cast a vote for someone of his own choosing” (602). People could be allowed to abstain or obtain conscientious-objector status.

D. Congressional Power to Enact Compulsory Voting Laws. “This section addresses whether Congress could enact compulsory voting laws, but puts aside the question of whether Congress would do so” (604; italics in original). Could; would; should. “[E]ven if Congress cannot constitutionally enact compulsory voting laws, individual states have the authority to do so because of the powers vested in them by Article II, Section I, as well as their residual powers under the Tenth Amendment” (604). [States can enact.]

1. Congress’s Powers to Regulate National Elections. The text of Article II, Section I, doesn’t support Congress having the power to compel voting; but the Supreme Court has “read Congress’s power to regulate presidential elections broadly in light of the Necessary and Proper Clause” (Article I, Section 8,
Clause 18) (605). Not broadly enough, though: “Congress’s Article II powers are . . . not a clear source of authority for enacting compulsory voting laws in presidential elections, although Article I [Section 4, Clause 1] would allow Congress to compel voting in congressional elections” (605). In practice, it may not matter, since if Congress compels voting in congressional elections (every two years), people will be at the polls when the presidential election takes place. [Congress can enact in congressional elections.]

2. Congress’s Power to Enforce the Reconstruction Amendments. The 15th Amendment (read it aloud) confers enforcement power on Congress, but this power has been cut back by the Supreme Court (in 1997). The author is doubtful that this argument will succeed, unless, of course, the Court overrules itself. [No 15th Amendment power to enact.]

3. Congress’s Power Under the Republican Guarantee Clause. Read Article IV, Section 4, which guarantees to each state “a Republican Form of Government.” The author concludes that “The clause is . . . not a likely source for congressional authority to enact compulsory voting laws” (607). [No Guarantee Clause power to enact.]

There is always the possibility of constitutional amendment. See Article V. [Amendment possible.]

IV. Practical and Political Problems with Compulsory Voting.

A. The Problem of Uninformed or Underinformed Voting. Couldn’t this make things worse (if that’s possible)? But wait; if being uninformed or underinformed is a problem, then why are we already allowing such people to vote? Universal suffrage, not compulsory voting, is the problem! Read the marked paragraph on page 608; the author says it’s not true that “most nonvoters are politically ignorant” (608). Perhaps compulsory voting will “cause current nonvoters to become more politically informed” (609).
B. Enforcement Costs. “[C]ompulsory voting can be enforced at a relatively low cost when compared with enforcement of most criminal laws” (610). Read the marked paragraphs on pages 610 and 611-2.

V. Conclusion. If time permits, read this aloud.